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DECISION



*D. W. Siebert
Civ Pers*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188080

DATE: December 13, 1977

MATTER OF: Joseph F. Maron--Per Diem At or Near Residence

DIGEST: Commencing July 1975, civilian employee of the Army whose permanent duty station was Fort Huachuca, Arizona, spent 355 3/4 days of constant temporary duty in several locations, 155 of which were spent at or near his family's domicile in Fairfax, Virginia. Subsequently a reduced rate of per diem for meals and incidental expenses was set at \$10 for each day at or near Fairfax. Employee is entitled to mandatory rate of per diem prescribed by Federal Travel Regulations paragraph 1-7.3c(1) (1975), \$14, absent advance written approval by the appropriate officer of a reduced rate.

This action is in response to a request for an advance decision by the Army Finance and Accounting Officer, Fort Huachuca, Arizona, as to the propriety of the claim of Mr. Joseph F. Maron, a civilian employee, for per diem for days spent at or near his family's domicile while on long-term temporary duty (TDY). The request has been forwarded here by the Department of Defense, Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 76-29.

Mr. Maron was permanently assigned to Fort Huachuca on March 8, 1970. Since that date, Mr. Maron has been on constant TDY, with a portion of that TDY at or near his home of record which is his family's domicile, Fairfax County, Virginia. Although Mr. Maron's official duty station is Fort Huachuca, he has his checks mailed to his family's domicile in Fairfax.

The Finance and Accounting Officer raises a question with regard to a 355 3/4-day period of TDY in an authorized per diem status, commencing in July of 1975, for which Mr. Maron claims per diem. During 155 of these days, Mr. Maron's temporary duty

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location was within commuting distance of his family's domicile where he could and did take lodging.

After Mr. Maron had served the above TDY and after his submission of a travel voucher, the executive officer at Fort Huachuca determined on September 1, 1976, that Mr. Maron should receive a per diem rate of \$10 per day for TDY served in the Fairfax area. His determination was made pursuant to Volume 2 of the Joint Travel Regulations (2 JTR) paragraph C8050-5, Change 111 January 1, 1975, effective during the period in question.

The Finance and Accounting Officer disputes payment of even this amount while Mr. Maron was in the Fairfax area. The Finance and Accounting Officer raises two objections to payment in this case: (1) that per diem is only intended for temporary or short-term duty in a specific location and not to span over a period of 6 years, and (2) that per diem can only be paid to one who has established a residence at his permanent duty station.

Section 5702 of title 5, United States Code (Supp. V, 1975), provides that under regulations prescribed by the Administrator of General Services, employees traveling on official business within the continental United States are entitled to a per diem allowance at a rate not to exceed \$35. Implementing regulations appear in the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973).

Paragraph 1-7.3a of the FTR specifically countenances "repeated travel," and paragraph 1-7.3d "extended stays." Accordingly, we find no merit in the Finance and Accounting Officer's first objection that per diem is only intended for temporary or short-term duty in a specific location and not to span over a period of years.

Paragraph 1-7.3c(1) of the FTR, as amended effective May 19, 1975, provides that per diem shall be established on the amount the traveler pays for lodging, plus a \$14 allowance for meals and miscellaneous expenses. Paragraph 1-7.3c(1)(a) of the FTR requires that there should be excluded from the computation the nights the employee spends at his residence or official duty station.

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Implementing regulations for civilian employees of the Department of Defense are contained in 2 JTR. Paragraph C8101 of 2 JTR, Change 118, August 1, 1975, applicable to the period in question, states in pertinent part that:

"1. * * * The rates of per diem specified in this paragraph are mandatory for the conditions of travel unless otherwise provided. * * *

"2. * * * Per Diem Rates Within the Continental United States. Except as otherwise provided herein or when a reduced rate is prescribed under the provisions in para. C8101-2; per diem for Courses of Instruction, the per diem rate is fixed partly on the basis of the average amount the traveler pays for lodging. To such amount is added the following for meals and incidental expenses, with the total rounded off to the next higher dollar:

"(Effective 19 May, 1975)

"1. \$14 when meals are taken in other than open messes * * *."

These regulations establish a mandatory rate of per diem while on TDY away from the employee's headquarters.

Regarding authority to prescribe reduced rates, FTR paragraph 1-7.3c(3) (1975), provides:

"An agency may determine that the lodging-plus method as prescribed herein is not appropriate in circumstances such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established and reductions made in accordance with this part, provided the exception from the lodging-plus method is authorized in writing by an appropriate official of the agency involved." (Emphasis added.)

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Paragraph C8050-5 of 2 JTR, Change 111, January 1, 1975, relied upon by the executive officer of Fort Huachuca in determining a per diem rate of \$10, provides that:

"An employee, who performs temporary duty at the place of his family domicile which is other than the place from which he commutes to work each day when on duty at his permanent duty station, may be authorized per diem even though meals and lodgings are taken at such domicile. Authority will be for only such per diem as is justified by the circumstances and will not exceed the amount required to meet necessary allowable expenses, the travel approving official will be responsible for approving an appropriate deduction (35 Comp. Gen. 554)."

This regulation must be interpreted consistently with FTR paragraph 1-7.3c(3), which means that the determination of a reduction must be made in advance. In fact, C8050-5 was promulgated in response to 35 Comp. Gen. 554 (1956) which only considered the question of whether under the "flat-rate" system, per diem might be allowed when lodging was taken at the family domicile. In 56 Comp. Gen. 233 (1977) it was stated that with the adoption of the "lodging-plus" system on October 10, 1971, we would no longer follow the ruling in 35 Comp. Gen. 554 (1956), for travel occurring after October 10, 1971. Paragraph C4552-2.m, Change 142, August 1, 1977, of 2 JTR, reflects this change and expressly provides for payment of per diem at the mandatory rate for meals and incidental expenses, but disallows costs for lodging.

Accordingly, since no reduction was approved in advance Mr. Maron is entitled to a per diem allowance of \$14 per day for each day of TDY he spent at or near Fairfax. This is not to say that Mr. Maron's per diem should not have been set at a lower rate in advance of his TDY. Paragraph 1-7.3a of FTR makes it the responsibility of each department and agency to authorize

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only such per diem allowances as are justified by the circumstances affecting travel. However, FTR paragraph 1-7.3c(3) requires that approval of a reduction be made in advance and in writing.

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of the United States